

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GUADALUPE HERRERA,

Plaintiff,

v.

MARY KAY INC.,

Defendant.

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Civil Action No. 3:08-CV-1309-N

ORDER

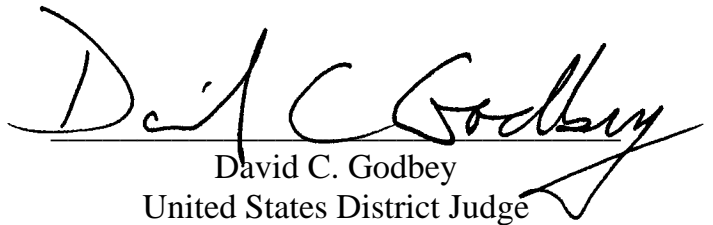
This Order addresses Plaintiff Herrera’s motion for partial summary judgment [35] and Defendant Mary Kay Inc.’s (“Mary Kay”) motion for summary judgment [38]. Herrera does not oppose dismissal of her claims for gender discrimination and assault, so the Court dismisses those claims with prejudice.

Herrera alleges a hostile work environment claim relating to the actions of two Mary Kay employees, Villalobos and Macedo. “Title VII requires employees to exhaust their administrative remedies before seeking judicial relief.” *McClain v. Lufkin Indus., Inc.*, 519 F.3d 264, 273 (5th Cir. 2008) (citing *Pacheco v. Mineta*, 448 F.3d 783, 788 (5th Cir. 2006)). “[T]he ‘scope’ of the judicial complaint is limited to the ‘scope’ of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination.” *Id.* at 274 (quoting *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455, 466 (5th Cir. 1970), emphasis omitted).

Herrera's EEOC Charge alleges that Herrera was "sexually harassed over a two year period by a fellow employee." Herrera provided an Intake Questionnaire to the EEOC stating: "Beginning in 2005, a fellow employee, Edwardo [sic] Villalobos, began sexually harassing me. I reported the sexual harassment over a two year period. In January 2008, I was terminated for complaining about the sexual harassment." Herrera never mentioned Macedo in her EEOC Charge. An EEOC investigation into Macedo's conduct could not reasonably be expected to grow out of a charge relating to Villalobos' conduct. The Court therefore grants Mary Kay's motion for summary judgment with respect to Herrera's hostile work environment claim based on Macedo's conduct.

The Court holds the summary judgment record shows genuine issues of material fact regarding the balance of the two motions, which are therefore denied.

Signed September 28, 2009.


David C. Godbey
United States District Judge